

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections of the)
Cable Television Consumer)
Protection and Competition Act of)
1992: Rate Regulation)

MM Docket 92-266

OPPOSITION TO PETITION FOR RECONSIDERATION
OF BELL ATLANTIC

Viacom International Inc. ("Viacom"), by its attorneys, hereby submits its opposition to the Bell Atlantic Telephone Companies' ("Bell Atlantic") petition for reconsideration in the above-captioned proceeding.

Bell Atlantic does not contend that the Commission's newly adopted cable rate regulations represent poor public policy or violate the Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Cable Act"). In fact, Bell Atlantic states that "there is no question that a pure price cap regime has many advantages over traditional regulation from the standpoint of both economics and public policy."¹ Yet, Bell Atlantic petitions the FCC to change its approach to price caps in a manner that Bell Atlantic already admits is flawed.

Bell Atlantic's Petition does not address the issues of whether the rules adopted by the FCC are appropriate in the context of the 1992 Cable Act or the public policy that the

¹ Bell Atlantic Petition at 4.

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Act purports to address. Instead, it goes well beyond the scope of this proceeding and introduces issues concerning cable and telephone company competition and infrastructure

declining to regulate basic rates where local authorities do not. However, the Bell Atlantic filing is devoid of any analysis as to how the Commission has erred and, other than a claim with respect to disparate treatment between cable and telephone companies, offers no reason for reevaluating the Commission's approach. Bell Atlantic's Petition simply has no support in law or policy.

I. "PARALLELISM" IS CONTRARY TO THE STATUTE AND WOULD BE POOR PUBLIC POLICY

Nowhere has Congress mandated that cable regulation should "parallel" the rules applicable to telephone

~~companies. Rather, the Communications Act and the~~

The Committee is concerned that several of the terms used in this section are similar to those used in the regulation of telephone common carriers. It is not the Committee's intention to replicate Title II regulation. The FCC should create a formula that is uncomplicated to implement, administer, and enforce, and should avoid creating a cable equivalent of a common carrier "cost allocation manual."⁴

In its recent Notice of Proposed Rulemaking regarding cost of service standards, the Commission expressly acknowledged this unambiguous directive:

The legislative history of the Cable Act of 1992 indicates a congressional preference that the regulatory framework we adopt for governing cable rates should not closely mirror common carrier regulation.⁵

Bell Atlantic has offered no analysis to support why the FCC should impose "parallel" regulation, other than for the sake of consistency.

Not only is Bell Atlantic's argument unsupported by law, but it also would constitute poor public policy. As both Congress and this Commission have recognized, cable and telephone constitute two quite different industries. Among other things, the cable and telephone industries are in dramatically different stages of development, have

⁴ H.R. REP. NO. 628, 102d Cong., 2d Sess. at 83 (1992).

⁵ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Notice of Proposed Rulemaking, FCC 93-353 at 10 n.16 (released July 16, 1993) (emphasis added).

significantly different economic and capital structures,⁶ and face much different competitive environments. As the Commission recently stated,

[t]he cable industry differs from mature regulated industries like telephone, gas and electric, each of which is characterized by a steady return on investment. The cable industry is still a relatively new industry, characterized by growth and reinvestment of earnings with the possibility that the expectations of investors in the cable industry differ from other regulated industries. Moreover, the cable industry, unlike industries such as telephone, relies heavily on private and semi-public sources of capital.⁷

Thus, as the Commission has recognized, these substantial differences between the cable and telephone industries justify, if not require, distinct regulatory treatment.

In any event, Bell Atlantic does not assert that the specific rules to which it objects are illogical in the context of the cable industry or not beneficial to the public. To the contrary, Bell Atlantic affirms that the price cap scheme adopted for cable "has many advantages over

⁶ As but one example, the cable industry generally reinvests its "profits" to improve the service provided to customers, rather than passing them on through dividends.

⁷ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Notice of Proposed Rulemaking, FCC 93-353 at 26 (released July 16, 1993) (citation omitted).

traditional regulation from the standpoint of both economics and public policy."⁸

II. THE 1992 CABLE ACT DOES NOT REQUIRE THE COMMISSION TO
REGULATE BASIC TIER RATES WHERE LOCAL AUTHORITIES CHOOSE
NOT TO DO SO

Bell Atlantic has offered no valid reason for modifying the Commission's decision not to regulate basic cable rates where local authorities choose not to. The Commission has already considered this issue thoroughly, and its decision is fully consistent with the 1992 Cable Act and the public interest. Bell Atlantic raises no new argument warranting a different result.

interest would not be served by having this Commission


~~regard~~ ~~such~~ ~~that~~ ~~judgment~~ ~~Members~~ ~~the~~ ~~public~~ ~~could~~ ~~not~~

interest. In view of this, Bell Atlantic's Petition should be denied.

Respectfully submitted,

VIACOM INTERNATIONAL INC.

By:

A handwritten signature in dark ink, appearing to read "Philip V. Permut", is written over a horizontal line.

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July 21, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 1993, I caused copies of the foregoing "Opposition to Petition for Reconsideration of Bell Atlantic" to be mailed via first-class postage prepaid mail to the following:

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